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JAMES BONINI  
CLERK

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

04 MAY 20 PM 1:36

KEVIN JACKSON, et al.,

CASE NUMBER C-1-01-0756

Plaintiffs,

Judge Weber

Vs

SOY SOK, et al.,

Defendants.

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**PLAINTIF'S MOTION FOR DISMISSAL PURSUANT TO FRCP 41 (A)(2) OF  
DEFENDANT INSURANCE COMPANIES, THE OHIO CASUALTY GROUP AND THE  
WESTERN AMERICAN INSURANCE CO., SUBSIDIARY OF THE OHIO CASUALTY  
GROUP, AND THE ST. PAUL FIRE & MARINE INSURANCE COMPANY AND  
USF&G INSURANCE ONLY**

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Now comes Plaintiffs by and through counsel, and hereby respectfully moves this Court to dismiss without prejudice the defendants The Ohio Casualty Group and The West American Insurance Co., subsidiary of The Ohio Casualty Group, and The St. Paul Fire & Marine Insurance Company and the USF&G Insurance only, pursuant to FRCP 41 (a)(2) for the reasons set forth in the accompanying memorandum.

**MEMORANDUM**

This case involves the death of a mother being run over by defendant Sok. The other defendants, The Ohio Casualty Group and The West American Insurance Co., subsidiary of The Ohio Casualty Group, and The St. Paul Fire & Marine Insurance Company and the USF&G Insurance were sued separately pursuant to the issue of additional insurance coverage for the

three children, who watched their mother die in front of their eyes, and the decedent's husband, Kevin Jackson.

The Ohio Supreme Court decision of Scott-Pontzer v Liberty Mutual Fire Insurance Company et al., (June 23, 1999). 85 Ohio St.3d 660, 710 N.E. 2d 1116, and its progeny of other cases opened the issue of the extent of insurance coverage to the situation involved herein.

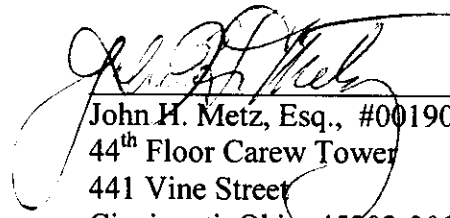
The Ohio Supreme Court (while noting the importance of *stare decicis* and the dissents objection to addressing an issue that was not raised below), recently announced Westfield Insurance Company v. Galatis et al., 100 Ohio St.3d 216 (2003) overruling Ezawa v. Yasuda Fire & Marine Ins. Co. of Am., 86 Ohio St.3d 557, 715 N.E.2d 1142.

As this Court may recall, defendant Ohio Casualty herein intervened in the case of Kevin Jackson, et al., v Soy Sok et al., case number C-1-98-440, objecting to Plaintiff's 60(b) motion to set aside the motion for default judgment previously granted by this Court. Defendant Ohio Casualty instituted an appeal on this case, which took this case off this Court's trial docket. But for defendant's appeal (which affirmed this Court's decision); the defendant's motion for rehearing en banc; and finally the defendant's Petition for Certiorari to the United States Supreme Court (which was denied); Plaintiffs would have likely had their trial and their recovery well before Galatis was decided.

At this point rather than going forward on motions and taking another appeal to the Sixth Circuit in this case, plaintiffs believe it is more reasonable to dismiss the within case without prejudice as to the insurance companies only herein given the recent court decisions. If the Ohio Supreme Court reverses or limits their decision by further caselaw, then the plaintiffs could re-file at that time; otherwise the case will self-extinguish by time.

**WHEREFORE**, plaintiffs respectfully move this Court to dismiss the within claims against defendants The Ohio Casualty Group and The West American Insurance Co., subsidiary of The Ohio Casualty Group, and The St. Paul Fire & Marine Insurance Company and USF&G Insurance without prejudice pursuant to FRCP 41(a)(2). Plaintiffs will file a motion for default judgment as to the only remaining defendant, tortfeasor Soy Sok who has not responded to this litigation and who is still incarcerated for this crime.

Respectfully submitted,



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**PROOF OF SERVICE**

I hereby certify that a copy of the foregoing was served upon all counsel by ordinary U.S. mail, postage prepaid, on this 20<sup>th</sup> day of MAY, 2004.

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